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IMPLEMENTATION OF THE DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF

Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1996/23

Addendum

Visit to Australia

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Introduction

1. From 17 February to 1 March 1997, the Special Rapporteur on the question of religious intolerance visited Australia at the invitation of the Australian authorities in accordance with his mandate under Commission on Human Rights resolution 1995/23 (encouraging Governments to invite the Special Rapporteur to visit their countries to enable him to fulfil his mandate even more effectively) and General Assembly resolution 50/183 of 22 December 1995 (inviting the Special Rapporteur, within the terms of his mandate and in the context of the formulation of recommendations, to take into account the experiences of various countries and the most effective measures in promoting religious freedom and countering all forms of intolerance).

2. During his mission, the Special Rapporteur travelled to Sydney (17-20 February, 28 February-1 March), Melbourne (21-22 February), Canberra (23-25 February) and Alice Springs (26-28 February) to meet official representatives at the Federal level (Ministers for Foreign Affairs; for Schools, Vocational Education and Training; for Aboriginal and Torres Strait Islander Affairs; for Justice; and for Immigration and Multicultural Affairs) and at the level of the States and Territories. He had talks in Sydney with representatives of the Department of Training and Education, the Anti-Discrimination Board, the Law Reform Commission, the Ethnic Affairs Commission and the Human Rights and Equal Opportunities Commission.

3. The Special Rapporteur held consultations with non-governmental human rights organizations and representatives of the Aboriginal, Baha'i, Christian, Hindu, Jewish and Muslim communities and with the Church of Scientology and The Family.

4. The Special Rapporteur also contacted independent personalities, including Mr. Michael Kirby, Chief Justice of the High Court of Australia, Mrs. Juliet Sheen, human rights consultant, and Mrs. Moira Raymer, President of the National Children's Youth Law Centre.

5. The Special Rapporteur wishes to thank the Australian authorities and the representative of the United Nations Information Centre for their excellent cooperation during the preparations for the visit and during the visit itself.

6. During his visit, the Special Rapporteur focused his analysis on the situation of tolerance and non-discrimination based on religion or belief in the Australian legal system and in Australian society.

I. TOLERANCE AND NON-DISCRIMINATION BASED ON RELIGION OR BELIEF IN THE AUSTRALIAN LEGAL SYSTEM

7. The Special Rapporteur examined the treatment and guarantees of tolerance and non-discrimination based on religion or belief in the Australian legal system in the context of the Australian Constitution and of Federal laws and State and Territory laws.

A. The Australian Constitution

8. It should be noted that the Australian Constitution does not contain a general bill of rights and freedoms. However, religious freedom is guaranteed by article 116 of the Constitution in the following terms: "The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth".

9. At the Federal level, these provisions thus safeguard the principle of neutrality vis-à-vis religion and religious freedom. The legal protection they afford is nevertheless limited because it applies only to the legislative powers of the Commonwealth and not to its other powers and activities, particularly its executive and judicial powers. Moreover, this Constitutional protection applies to the Commonwealth and not to the States and Territories, which, by law, have freedom of action with regard to religious freedom (including restrictions).

10. In its final report in 1980, the Australian Constitutional Commission to Commemorate the Bicentenary of European Colonization recommended that article 116 of the Constitution should be amended so that Federal guarantees of religious freedom would be enforced in all States and Territories of the Commonwealth. During the 1988 referendum, the question of the extension of Federal guarantees of religious freedom to all States and Territories of the Commonwealth was rejected by 69 per cent of the voters.

11. This limited protection of religious freedom must, however, be offset by the progress made in the legal protection of religious freedom as a result of decisions of the High Court of Australia relating to the definition of the term "religion" and interpretations of constitutional provisions relating to "the establishment of a religion".

12. With regard to the definition of the term "religion", in the Church of the New Faith v. Commission for Payroll Tax case in 1983, the High Court had to determine whether the Church of Scientology fit the description of a "religious, public and voluntary institution" to be exempted from taxes on wages paid to staff under the income tax law. The High Court found in favour of the Church of Scientology and indicated that the status of a "religion" did not apply only to theistic denominations. Judge Mason and Judge Brennan specified that there were two criteria for determining the existence of a religion: belief in a supernatural being, thing or principle and submission to rules of conduct shaping such a belief. Judge Murphy proposed that any organization which purported to be religious and whose belief and practices were reminiscent of or reflected ancient forms of worship could claim to believe in one or more supernatural beings, a god or an abstract entity and would be regarded as a religion.

13. As to the provisions on the "establishment of a religion", in the Attorney-General for the State of Victoria (the relations of Black) and Others v. the Commonwealth of Australia and Others case in 1981, the High Court dismissed a petition designed to establish that Federal subsidies for

religious schools were contrary to article 116 of the Constitution, since such public funding was granted without distinction between the various religions and was therefore not tantamount to the establishment of a religion. This decision was a turning-point in case law and reflected a conciliatory attitude and an interpretation that was diametrically opposed to that of the Supreme Court of the United States of America, which interpreted the Constitution as providing for the separation of Church and State by prohibiting public funding for denominational schools (see Reynolds v. United States case).

14. During his talks, the Special Rapporteur noted that there are two trends with regard to article 116 of the Constitution. Some persons with whom he spoke regretted that the law provided only limited protection for religious freedom and said that religious freedom and even religious tolerance should be referred to specifically and that Federal guarantees should be extended to all States and Territories. Many persons considered, however, that the existing constitutional provisions are adequate and recalled that, in the common law tradition, most citizens' freedoms had been given by judges rather than by the law and that an extension of the provisions of article 116 to the States and Territories of the Commonwealth would be seen as interference by a population that is suspicious of politicians. Many persons stressed that religious freedom depended not so much on the law, but on Australia's practice and tradition of tolerance and religious freedom.

B. Federal laws

15. In accordance with the Australian Constitution, the Commonwealth is responsible for external affairs and, in particular, the adoption of legislation to give effect to the international treaties that have been ratified. Among the texts of particular interest for the Special Rapporteur's mandate, attention is drawn to the Human Rights and Equal Opportunity Commission Act 1996 (HREOC), which sets up the Human Rights and Equal Opportunity Commission.

16. HREOC's mandate is, inter alia, to promote understanding, acceptance and public discussion of human rights and equal opportunity in employment; to investigate Commonwealth acts and practices which are not in keeping with human rights and constitute discrimination; to advise the Parliament on legislation and the Commonwealth on activities relating to human rights, equality of opportunity and employment; and to suggest action to be taken by Australia in accordance with the international instruments to which it is a party.

17. It should be stressed that the HREOC's mandate allows it to base itself on human rights definitions contained in the International Covenant on Civil and Political Rights and in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. It is thus fully authorized to exercise its jurisdiction, particularly with regard to the settlement of disputes and the education of citizens whenever manifestations of intolerance and of discrimination based on religion or belief are brought to its attention.

18. It should be made clear that, because of its legal nature, the 1981 Declaration cannot be ratified. However, the Australian authorities took the view that they were bound by that instrument and included it within HREOC's jurisdiction. Thus, although a citizen cannot apply for a remedy on the basis of the 1981 Declaration, such an application is possible in the context of HREOC. In this connection, HREOC representatives said that, because of their limited jurisdiction, only a few such remedies had been applied for under the 1981 Declaration (fewer than 10 since 1993). It was recalled that "the HREOC Act does not guarantee rights and does not prohibit discrimination. It does not provide enforceable remedies". Through the process of the submission of its report to the Parliament for discussion, however, the Commission has a means of exerting moral and political pressure. It can also show initiative enabling it to go beyond the limits set by the Commonwealth. In this connection, the Special Rapporteur welcomes HREOC's initiative of launching a campaign, by means of a working paper entitled "Free to believe? The right to freedom of religion and belief in Australia", to collect information and comments on Australia's compliance with the 1981 Declaration and its experience of freedom of religion and belief. HREOC will then submit a report to the Federal Attorney-General to advise him on the action to be taken to ensure that Australia complies with the provisions of the Declaration.

19. In addition to the HREOC Act 1986, the Racial Discrimination Act (1975) is of particular importance, even though it provides limited protection against discrimination on religious grounds. "If a religious group can also be classified as an 'ethnic' group, the Act may cover direct and indirect discrimination and vilification under the racial hatred provisions of the Act. Even if a religious group cannot be classified in that way, the Act arguably covers discrimination on the basis of religion in certain circumstances as indirect race discrimination. Indirect discrimination occurs when a practice or policy treats everyone in the same manner, but in effect disadvantages a higher proportion of people from particular racial or ethnic groups and it is not reasonable in the circumstances" (for example, denying a job to an Australian Muslim woman who wears the headscarf).

C. State and Territory laws

20. As indicated in section A on the Australian Constitution, the protection of religious freedom provided for in article 116 of the Constitution is applicable to the Commonwealth and not to the individual States and Territories; that explains why there is a wide variety of legislation in the States and Territories. Although the international instruments covered by the 1986 HREOC Act form part of Federal legislation, the Act provides that it is not binding on the States.

21. With regard to the laws, Tasmania is the only Australian State whose Constitution contains a provision on religious freedom. The States of Victoria, Queensland and Western Australia and the self-governing Territories have adopted anti-discrimination acts. "Each of the Acts makes it unlawful to

discriminate against another person on the basis of lawful religious beliefs and practices or the absence of lawful religious beliefs and practices." These texts do not guarantee freedom of religion, but prohibit discrimination.

22. In the States of New South Wales, Southern Australia and Tasmania, the Anti-Discrimination Act does not cover discrimination based on religion. In New South Wales, however, the legal definition of the term "race" includes ethno-religious data, thereby providing protection from discrimination against some religious groups when they can be classified as ethno-religious.

23. It should also be noted that the anti-discrimination legislation provides for exceptions allowing discrimination based on religious beliefs and activities for the benefit of religious communities (for example, the possibility for denominational schools to practise a discriminatory employment policy based on the religious beliefs of applicants). The possibility of benefiting from these exceptions explains why the main religious communities are opposed to a specific reference to the prohibition of religious discrimination in the laws of New South Wales.

24. It should also be pointed out that "the Northern Territory Act provides specifically that religious belief and activity includes Aboriginal spiritual belief and activity". Legal matters relating to Aboriginals are referred to below in part II, section C (paras. 76-102).

25. During his talks, the Special Rapporteur found the same two trends as those described in section A on article 116 of the Constitution, namely, persons who interpret the diversity of State and Territory laws as a fragmentation and the non-inclusion of religion in the anti-discrimination laws of some States as a gap which could be prejudicial to the protection of religious freedom and which should be legally filled, and persons who find the situation satisfactory and referred to Australian traditions, particularly its traditions of tolerance.

II. TOLERANCE AND NON-DISCRIMINATION BASED ON RELIGION OR BELIEF IN AUSTRALIAN SOCIETY 1/

26. The Special Rapporteur assessed the situation with regard to religion and belief in Australia, as well as the situation of religious minorities, particularly the Aboriginals.

A. Situation of religions and beliefs

27. Religious diversity characterizes Australian society, as is clear from the following table, which shows the size of the various religious communities and how they have changed in time on the basis of the results of the 1981, 1986 and 1991 censuses.

1/ Society in the broadest sense, i.e. civil, political, etc.

Distribution of major religions in Australia

	1981		1986		1991	
Religion	('000)	%	('000)	%	('000)	%
Christian						
Catholic a/	3 786.5	26.0	4 064.4	26.1	4 606.7	27.3
Anglican	3 810.5	26.1	3 723.4	23.9	4 018.8	23.9
Uniting b/	712.6	4.9	1 182.3	7.6	1 387.7	8.2
Methodist c/	490.9	3.4	-	-	n.a	n.a
Presbyterian	637.8	4.4	560.0	3.6	732.0	4.3
Orthodox	421.3	2.9	427.4	2.7	474.9	2.8
Baptist	190.3	1.3	196.8	1.3	279.8	1.7
Lutheran	199.8	1.4	208.3	1.3	250.9	1.5
Pentecostal	72.1	0.5	107.0	0.7	150.6	0.9
Churches of Christ	89.4	0.6	88.5	0.6	78.3	0.5
Jehovah's Witness	51.8	0.4	66.5	0.4	74.7	0.4
Salvation Army	71.6	0.5	77.8	0.5	72.3	0.4
Seventh Day Adventist	47.4	0.3	48.0	0.3	48.4	0.3
Latter Day St/Mormons	32.4	0.2	35.5	0.2	38.4	0.2
Brethren	21.5	0.1	23.2	0.1	24.1	0.1
Oriental Christian d/	-	-	10.4	0.1	23.3	0.1
Congregational	23.0	0.2	16.6	0.1	6.3	0.0
Other Protestant	220.7	1.5	199.4	1.3	n.a	n.a
Other Christian	253.8	1.7	346.4	2.2	199.2	1.2
Total Christian	11 133.3	76.4	11 381.9	73.0	12 466.4	74.0

	1981		1986		1991	
Religion	('000)	%	('000)	%	('000)	%
Non-Christian						
Muslim	76.8	0.5	109.5	0.7	147.5	0.9
Buddhist	35.1	0.2	80.4	0.5	139.8	0.8
Jewish	62.1	0.4	69.1	0.4	74.2	0.4
Hindu e/	-	-	21.5	0.1	43.6	0.3
Other non-Christian	23.6	0.2	35.7	0.2	40.0	0.2
Total non-Christian	197.6	1.4	316.2	2.0	445.0	2.6
Other						
Non-theistic	n.a	n.a	4.9	0.0	n.a	n.a
Inadequately described	73.5	0.5	58.0	0.4	49.8	0.3
No religion (so described)	1 576.7	10.8	1 977.5	12.7	2 176.6	12.9
Not stated	1 595.2	10.9	1 863.6	11.9	1 712.3	10.2
Total other	3 245.4	22.3	3 904.0	25.0	3 938.7	23.4
TOTAL	14 576.3	100.0	15 602.2	100.0	16 850.2	100.0

Source: Australian Bureau of Statistics, 1988a, p. 19; ABS 1991 Census.

a/ Roman Catholics and Catholics (non-Roman).

b/ The Uniting Church was formed in 1977 from the Methodist, Congregational and part of the Presbyterian Churches.

c/ People who responded Methodist in 1986 were coded to Uniting.

d/ Included in Other Christian in 1981.

e/ Included in Other Non-Christian in 1981.

28. In terms of numbers of believers, the Christian religion is the majority religion. Within this dominant religion, Anglicans and Catholics are the largest religious communities. However, things recently changed, since the Anglicans were the largest religious group until the 1980s, but, during that time, the Catholics moved into first place as a result of an immigration

policy that led to the settlement of large European Catholic communities, whereas, at the beginning, immigration to Australia was European, of course, but mainly Anglo-Saxon and mostly Anglican.

29. In addition to the two main Anglican and Catholic religious groups, there are minority Christian communities such as the Uniting Church, the Presbyterian Churches, the Baptist Church, the Churches of Christ, the Jehovah's Witnesses, the Lutheran Church, the Orthodox Church, the Pentecostals, the Salvation Army and other Christian denominations.

30. Non-Christian religious minorities have also gained in importance in Australia because of the official immigration and cultural cohabitation policy of the 1960s and 1970s that put an end to the "white Australia policy" and led to the introduction of new religions. The Muslim religion is the first Australian minority religion (0.9 per cent of the population); its real growth dates back about 20 years, with the arrival of Lebanese and Turkish immigrants, followed by immigrants from the Arab world, Pakistan, India, Indonesia, Malaysia, Bangladesh, Fiji, Albania, the former Yugoslavia, Greece, South Africa, etc.

31. Buddhism is the second Australian minority religion (0.8 per cent of the population) and has been mainly since the 1980s as a result of the arrival of Asian immigrants, especially from Viet Nam, Cambodia and China, and of the current growth of Buddhism throughout the world.

32. Judaism, which has been present since the country was colonized, is the third Australian religious minority (0.4 per cent of the population). The Hindu religion is the fourth religious minority; it has also grown as a result of the arrival of Asian immigrants.

33. Aboriginals are not identified in the table of religions in Australia. Part of this population may, of course, be included in the Christian religion. However, the Aboriginals also have their own beliefs, which are manifested by their sacred ties to the Earth and which have to be taken into account as part of Australia's religious diversity.

34. Another factor that has to be taken into account is the absence of belief. During censuses, 12.9 per cent of the population described itself as non-believers. This phenomenon relates primarily to the majority Christian religions and is apparently larger in size than the censuses show. The majority of citizens do not practise their religion, but, the main factor that has contributed to the increase is indifference as religious feeling becomes less strong.

B. Situation of religious minorities

35. During his talks, the Special Rapporteur collected a great deal of information on the Muslim and Jewish minorities, which are analysed separately. He decided to combine the analysis of the Buddhist and Hindu minorities because the information he received on them tallied and was similar. Separate consideration is also given to the situation of small communities such as the Church of Scientology and The Family.

1. Situation of Muslims

(a) Religious matters

(i) Religious practice and conduct of religious affairs

36. Muslim religious and civilian representatives said how privileged their community was in terms of religion compared to Muslim minorities in other countries and Muslims in Arab countries. They said that Muslims were free to carry out their religious activities, including religious services and traditions, as well as the management of business relating to their religious institutions. They indicated that, contrary to some countries in the Arab world, Australia allowed imams freedom of expression, particularly for the sermons they gave in the mosques.

37. One of the characteristics of Australian Muslims is the importance of religious practice on Fridays and religious holidays. The call to prayer is allowed, but without microphones, except at the end of Ramadan. The Muslim representatives said that they had requested official recognition of religious days so that believers, i.e. adults in the workplace and young people in school, who so wished did not have to work on those days. It was also stated that the authorities approached responded positively to such requests. One representative of the Department of Training and Education in the State of New South Wales said that, if the Muslims insisted, religious holidays could be observed in public schools, as was already the case for the Jewish community. In reply to the Special Rapporteur's question on how requests by minorities could be reconciled with the concerns of the majority, a representative of the Human Rights and Equal Opportunity Commission explained that, while the Australian democratic system was based on a general preference for the majority, flexibility, compromise and pragmatism had to be demonstrated, according to the context.

38. During the talks, attention was also drawn to the importance of inter-faith dialogue and the positive and genuine results it had had in society (see subsection (b) (paras. 43-45) below).

(ii) Religious teaching

39. The importance of religious education is one of the characteristics of Australian Muslims. The Muslim community has 23 religious schools (Madrassa) for 8,000 students. The teachers are recruited by the community leaders, who pay their salaries. The curriculum has to be in line with Department of Education criteria and includes subjects such as Islam and the Arabic language. State subsidies may be granted to these private schools. With regard to private funding, it was noted that Saudi Arabia is one of the foreign donors, but the policy followed by the representatives of the Australian Muslim community was to accept gifts unconditionally.

(iii) Places of worship

40. The Muslim community has 107 mosques and places of worship in Australia. The representatives of the Muslim community and the authorities indicated that, in the past, there had been problems with projects for the building of

mosques. The opposition of non-Muslim inhabitants near building sites of places of worship were expressed as fears that there would be noise and vehicle traffic when believers arrived and left. Such fears reflect apprehensions based on difference and ignorance, if not a form of racism. These problems now occur only sporadically and are said to have been solved through dialogue.

41. The Special Rapporteur found the attitude of the authorities to be positive and constructive. Official initiatives of particular interest include the following announcement by the Prime Minister of New South Wales during the Id al-Fitr celebration on 9 February 1997: "The provision of prayer facilities in the workplace is important for Muslim workers and I have always believed that the public service as the State's largest employer should set an example. The Government will introduce amendments to the public service handbook to ensure public sector workplaces make every effort to provide space for prayer where there is a need. The Ethnic Affairs Commission and the Department of Public Works will work together to ensure that suitable washing facilities are incorporated into the design of public sector workplaces in the future."

42. The Muslim community finally seems to be able to express itself fully in matters of religion, a situation to which Australian authorities and institutions have contributed. The Special Rapporteur particularly wishes to stress the basic role of the New South Wales Ethnic Affairs Commission, which has, inter alia, set up the Interdepartmental Committee on Religious Development, which encourages the participation of ethnic groups and their unity within society and whose mandate is to solve problems between various official and private actors, conduct inquiries, formulate recommendations and monitor their implementation.

(b) Other areas

43. The Australian Muslim community is characterized by experience based on sound community structures, including cultural centres, places of worship, schools and a network of associations enabling this minority not only to preserve its cultural and religious identity, but also to integrate in Australian society.

44. This harmony may sometimes be disturbed as a result of the impact of international events (the Gulf war, for example) and national events (political statements against "foreigners" by MP Pauline Hanson, for example). However, these appear to be more incidents of racism based mostly on ignorance and not manifestations of religious intolerance. The incidents relating to the Gulf war and cases of verbal aggression against Muslim women wearing the headscarf, are indicative of the ignorance of persons who associate Saddam Hussein with Islam and, in general, terrorism with Arabs and Muslims (much of this confusion is, moreover, created by the Australian and non-Australian media). These incidents were handled in a positive way through dialogue between the various denominations which led, for example, to the dissemination of a joint statement by religious communities as well as by political and security authorities, calling for tolerance. Questions are sometimes asked about the clothing some Muslim women wear, their status and their place in the working world, as well as about recognition of Muslim

religious days in schools and private workplaces. Many persons with whom the Special Rapporteur spoke stressed that the consideration of such questions led to dialogue and negotiations. The Muslim representatives also stated that they were surprised about one attitude taken by Australian society, which was, on the one hand, generally hesitant, if not shocked, about the "hijab" worn by some Muslim women and, on the other, indifferent to, if not in favour of, female nudity on beaches and in the media. In some cases, Australian society even had a militant attitude in favour of the rights of homosexuals. The Muslim representatives said that such selective attitudes reflected a double standard.

45. The role of community representatives, authorities and their institutions, as well as Australia's tradition of tolerance, were thus basic elements characterizing the generally very satisfactory situation of Muslims, who can, if they so choose, integrate into their adopted country without becoming assimilated.

2. Situation of Jews

(a) Religious matters

(i) Religious practice and conduct of religious affairs

46. Civilian and religious representatives of the Jewish community stated that they were able to carry out their religious activities freely, particularly with regard to religious services and traditions and the management of the business of religious institutions.

47. Australia's community harmony and, in particular, the importance of inter-faith dialogue are two points that were stressed. In this connection, religious holidays are often an opportunity to invite the leaders of other communities and get to know them, their cultures and their religions, as well as to promote dialogue.

(ii) Religious teaching

48. The Jewish community has about 20 schools. Jewish representatives said that parents preferred to send their children to Jewish religious schools since the Australian school system is not really multicultural. The curriculum is, of course, non-religious, but public schools have a Christian orientation.

49. Like Muslim religious schools, Jewish schools can be partly funded by public subsidies. Teachers are recruited by Jewish community leaders, who can choose candidates from their own religion in accordance with the principle of positive discrimination. As indicated in chapter I, section C, on State and Territory laws (paras. 20-25), the representatives of the main Christian, Jewish and Muslim communities have actively campaigned to prevent anti-discrimination laws, particularly in New South Wales, from prohibiting religious discrimination when it is positive for the communities concerned, especially with regard to hiring in private schools.

(iii) Places of worship and cemeteries

50. The Jewish community has about 70 synagogues in Australia. No problems are encountered with regard to the construction of places of worship. However, many incidents of vandalism against synagogues and Jewish cemeteries have been reported. These incidents are manifestations of anti-Semitism, apparently committed by small groups, and are contrary to Australia's tradition of tolerance.

51. Apart from reprehensible incidents of anti-Semitism, the situation of the Jewish community with regard to religion is satisfactory.

(b) Other areas

52. The Jewish community is fully integrated into Australian society, of which it has been an active part since the arrival of the first settlers and whose public participation in the building of the country, particularly by top political leaders, is recognized.

53. Jewish community representatives said that tolerance and the lack of obstacles to Jewish believers in the economic, political, social, cultural and religious spheres of Australian society made for a very favourable situation compared to that in many other countries.

54. They nevertheless made some requests with regard to the elimination of Christian insignia in public life, including prayers during the opening of Parliament, the official election day on Saturday, which is the Sabbath (being able to vote in advance after filling out a form explaining that it is impossible to vote on Saturday for religious reasons is an option, but it can be a problem for Jewish candidates), and the cross on the national flag. The comments by a HREOC representative that are summarized in paragraphs 36 to 38 in subsection 1 on the "Situation of Muslims" are also relevant and highlight the need to reconcile multiculturalism and the unity of society.

55. With regard to isolated outbreaks of anti-Semitism in the form of attacks on places of worship and cemeteries, as well as verbal and written attacks and extremist political propaganda, many persons with whom the Special Rapporteur spoke said that the Jewish community was well enough structured to report and combat them. The Rabbi of Sydney said that what was involved was not anti-Jewish racism, but xenophobia, and that, paradoxically, such attacks were not an expression of intolerance in Australia.

56. Through its institutions and its leaders' dynamism, the Jewish community thus enjoys a satisfactory situation enabling it to maintain its identity.

3. Situation of Buddhists and Hindus

(a) Religious matters

(i) Religious practice and conduct of religious affairs

57. Like the Muslim religion, Buddhism and then Hinduism grew very rapidly in Australia, mainly because of large-scale Asian immigration. After Islam, Buddhism is the religion with the highest exponential growth compared to the other religions.

58. According to the information received, Buddhists and Hindus may freely carry out their religious activities, including religious services and traditions and the management of the business of their religious institutions.

59. The authorities have also allowed foreign religious leaders to come to Australia to meet the spiritual needs of the Buddhist and Hindu communities, most of whose members are Asian, and to encourage them to integrate more fully into Australian society.

60. Buddhist and Hindu religious leaders also play an important role in establishing an inter-faith dialogue with the Christian, Muslim and Jewish communities.

61. The Buddhist and Hindu communities would like their religious days to be officially recognized, particularly to enable their members to abide by their beliefs in the workplace. The authorities, including those from the Department of Immigration and Multicultural Affairs, indicated that negotiations with companies were possible, for example, and that, in general, there was an ongoing process of negotiation.

(ii) Religious teaching

62. Religious education is one of the characteristics of the Buddhist and Hindu Asian communities. Such teaching can usually be provided in private schools without any problem. However, the authorities and Hindu and Buddhist representatives said that obstacles had occasionally arisen when applications were made for building permits for private training schools; residents in the area of a future building site opposed such projects for fear of an Asian invasion which would upset local cultural and social characteristics and lower property values. It was also stated that local authorities sometimes rejected applications for building permits because they were not in conformity with the relevant legislation, since they did not contain information on the procedure to be followed.

63. Such problems were being solved as a result of the constructive approach taken by the authorities and the key role of the New South Wales Ethnic Affairs Commission and, in particular, its Interdepartmental Committee on Religious Development. The Committee also recommended an information campaign for religious communities on the relevant building permit legislation, using the languages of the communities concerned.

64. The authorities, including the Minister for Multicultural Affairs and the Department of Immigration and Multicultural Affairs, drew attention to the Government's role in educating the population through campaigns designed to combat racism resulting from ignorance, not religious intolerance.

(iii) Places of worship

65. Apart from the above-mentioned obstacles, it may be said that the Buddhist and Hindu communities have enough places of worship.

(b) Other areas

66. In recent years, there has been a large increase in the number of Buddhists and Hindus in Australia and their communities are now being structured. As indicated above, their integration into Australian society has been facilitated by the authorities, which are also helping to maintain their cultural and religious identity in accordance with their policy of cultural, ethnic and religious diversity. The situation of these minorities in religious and non-religious matters seems to be satisfactory, despite a few isolated incidents attributable not to religious intolerance, but, rather, to ignorance fuelling manifestations of racism encouraged by some isolated extremist political statements, such as those by MP Pauline Hanson.

4. Other communities

(a) Church of Scientology

67. By virtue of the 1983 High Court decision in Church of the New Faith v. Commission for Pay-Roll Tax, the Church of Scientology is recognized as a religious institution in Australia and is therefore entitled to tax relief (see above, para. 11). Several religious and non-governmental commentators expressed the view that it was really a sect based on a combination of elements borrowed from psychology and religion and on a search for profit at the expense of its members, achieved through brainwashing, chiefly among young people. Scientology awoke not only suspicions, but also fears owing to its aggressiveness and virulence, especially in its legal proceedings against any opponent.

68. Other non-official commentators criticized the pressures exerted by the Church of Scientology on its members to extract money from them, but they said that they were not opposed to the community as such.

69. The Minister for Foreign Affairs said that the Church of Scientology represented only a small number of individuals in Australia, where people were free to do what they wanted within the law of the country. He added that new religious movements sprang up and vanished "like mushrooms" in Australia and that they did not constitute a problem. The Minister recalled the basic principle of Australian society, which was religious freedom for any denomination without the State deciding whether a belief was good or bad, in order to avoid causing social divisions. Undoubtedly any violations committed by a religious group should be sanctioned, but they should not lead to banning the religion as such.

70. Representatives of the Church of Scientology reported that they enjoyed total religious freedom, including for their places of worship, and entertained good relations with the authorities. A few minor problems were mentioned by those representatives, such as the fact that some religious groups spread negative propaganda against all new religious movements. Generally speaking, however, according to the Scientologists, their church maintained "cordial" relations with the representatives of major religions,

which however kept their distance as a result of their "conservatism". Scientology appears to be closer to minority groups such as the Jehovah's Witnesses, the Unification Church, The Family and the Mormons, and is said to assist them with advice, moral support and public relations.

71. Non-governmental representatives mentioned Australian society's attitude of tolerance towards new religious movements, chiefly in recognition of the latter's social activities, such as helping drug addicts and young people. One commentator, however, expressed fears regarding the risk of repercussions following events affecting the same communities in Europe, where they were regarded as sects, and also regarding the influence of the media, which tended to caricature them.

(b) The Family

72. The Family, which originated in the former "Children of God" movement, portrays itself as a new religious movement based on the teaching of the Bible, the education of children at home and community life (about 400 persons).

73. As indicated in the Special Rapporteur's communication dated 14 October 1993 addressed to the Australian Government (E/CN.4/1994/79), in May 1992, the six Family communities in Sydney and Melbourne were raided by the police and members of the medico-social services, who carried out house searches and took children away from their families for questioning and medical examinations. Several days later the children were returned to their parents for lack of evidence supporting charges of sexual abuse against minors or the description of the movement by some of the media as a "dangerous sect".

74. Judicial proceedings had been started, partly owing to differing interpretations of the legal status of teaching in the home as practised by The Family. Finally an amicable agreement was reached, which included a programme of social activities for the children and a temporary suspension of proceedings. At the request of Family lawyers, the Commonwealth ombudsman had ordered an inquiry into the behaviour of the police and medico-social services. He recommended that in sensitive areas like child abuse, investigations should be conducted thoroughly and with the least possible disruption to the lives of families involved. He recommended changes to the system to improve communication between State agencies and greater accountability. In November 1993, the case was dismissed by the Children's Court in New South Wales. The Family has since been seeking damages from agencies. Family representatives have appealed for rehabilitation by the withdrawal of all allegations against them and have expressed fears of discrimination on the part of the authorities.

75. The comments made by the Minister for Foreign Affairs reported in the section on the Church of Scientology also apply in the case of The Family.

C. Situation of the Aboriginals

76. Within the framework of the official process of reconciliation with the Aboriginals (who were the victims in the past of discriminatory policies and practices), the Special Rapporteur wanted to examine the situation of Aboriginals with respect to religious and non-religious matters.

1. Religious matters

77. The land and sacred sites hold a fundamental significance for the Aboriginals, insofar as their beliefs are identified with the land. A basic question is therefore the recognition of an Aboriginal religion intrinsically related to the land within the framework of an Australian society essentially based on Judeo-Christian and western values. In the view of the Aboriginals, maintaining the integrity of the land takes on a religious dimension, which therefore has to be preserved. In more recent years, steps have been taken by the Federal and State Governments to recognize and protect the rights of Aboriginals to their lands and sacred sites, most importantly through the Mabo case and the Native Title Act 1993.

(a) Native titles

78. In 1992, the High Court of Australia held in the Mabo (No. 2) case that the common law recognizes some form of native title in accordance with the laws and customs of the Aboriginals. They found that Aboriginal peoples may have maintained continued links with that land under traditional law.

79. In response to the Mabo decision, the Commonwealth Government enacted the Native Title Act 1993. The Act defines native title as "the communal, group or individual rights and interests of the Aboriginal peoples or Torres Strait Islanders in relation to land or water" where:

> "(a) The rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders;
>
> (b) The Aboriginal peoples or Torres Strait Islanders, by those laws or customs, have a connection with the land or waters; and
>
> (c) The rights or interests are recognized by the common law of Australia."

80. The main features of the Act are that it:

> "Recognizes and protects the existence of native title rights and interests in the common law of Australia;
>
> Validates past Commonwealth acts in relation to land which might otherwise have been invalid as a result of the High Court's decision;
>
> Provides processes for determining where native title still exists, for future dealings in native title land, and for compensation for extinguishment of native title; and
>
> Enables compatible State and Territory laws to be recognized."

81. Native title is also protected by the Racial Discrimination Act (Cth). The Act requires that, to extinguish native title, the Government must follow the procedures for extinguishing other interests in land, as to extinguish native title alone would be racially discriminatory.

82. Despite these steps to recognize and protect the rights of Aboriginal and Torres Strait Islander peoples to their land and sacred sites, however, it had been argued that many Aboriginal and Torres Strait Islander peoples are unable to benefit from these improvements because in the past they have been dispossessed of their land which has been alienated, their ties to it have been broken and their traditional land-lore has been lost.

83. It has also been argued that the Mabo decision and the Native Title Act do not provide sufficient protection for Aboriginal and Torres Strait Islander peoples to own and control their culture and heritage. Some Aboriginal groups, such as the New South Wales Land Council, have called for further legislation to transfer the regulation of Aboriginal culture and heritage to Aboriginal control, particularly with respect to sacred and significant sites and the return of human remains.

84. Mick Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner, also expressed grave concern that the Federal Government's proposed amendments to the Native Title Act (NTA) breached its commitment to respect the principles of the Racial Discrimination Act. "Proposals regarding the expansion of pastoral leases and the erosion of the right to negotiate would override the provisions of the Racial Discrimination Act (RDA). Far from enhancing the operation of the NTA, I am apprehensive that the Government's amendments will sow the seeds of litigation throughout Australia. This will help none of us."

85. "The pastoral lease amendments allow Governments to expand pastoral lease interests and uses, while denying affected title holders the procedural protections which would apply to ordinary title holders in the same circumstances. The amendments are not necessary to protect the existing interests of pastoralists. They are safe under the current Act", Mick Dodson said.

86. Proposals to reduce the scope of the right to negotiate were also criticized on human rights grounds. "The Government has proposed removing the right to negotiate from exploration and prospecting titles, allowing ministerial intervention prior to determination of claims, making the right to negotiate a 'once only' process and reducing the time for negotiation and arbitration", Mick Dodson explained.

87. "The Government mistakenly regards the right to negotiate as being a special 'gift' to indigenous peoples, which it can take away as it pleases. The right to negotiate is a recognition of actual native title rights, and its preservation is essential if native title is to be accorded true equality of protection. Erosion of the right to negotiate would remove the balance of the NTA, which protects the titles of all other Australians."

88. Mick Dodson also raised concerns about the practical inability of native title holders to protect their rights when activity such as mining is proposed. This is due to the introduction of a very onerous registration test, which must be satisfied by claimants before they are even entitled to negotiate over, not stop, development of land under claim.

89. "Indigenous peoples are keen to find ways of facilitating land use agreements." Mick Dodson put forward positive suggestions for enhancing the role of representative bodies and encouraging mediation and the development of indigenous land use agreements. "It is critical that the Government recognizes that encouragement of negotiation and agreement is the way to achieve genuine 'workability' and 'certainty' while respecting the rights of all Australians. The real challenge is to get away from litigation and to get agreement on practical proposals for development."

90. Some concern may also be felt at the opposition of many politicians to the High Court decision of 23 December 1996 ("Wik decision"), which held that a grant of a pastoral lease did not necessarily have the effect of extinguishing native title of the type earlier recognized by the Court in the Mabo v. Queensland case.

(b) Other protections

91. Many different kinds of protection, both specific and general, direct and indirect, are given to the land and to sacred sites, including sacred objects, and therefore to their religious dimension. They take the form either of regional agreements and legislation ensuring the protection and management of Aboriginal lands or Commonwealth and State and Territory laws on property and the cultural heritage. These forms of protection are the expression of an official policy in favour of Aboriginals, based on well-developed legislation. There are still a number of difficulties, however, related to loopholes and shortcomings in the laws and to interference with their objective, mainly owing to conflicts of interest.

92. Regarding the loopholes and shortcomings in the law, in the first place and in general, there is the problem of its complexity, particularly with respect to relations between Federal and State systems, that is, between federal Laws, which are few and protective, and State and Territory laws, which are many, uneven in the degree of protection they afford and sometimes inadequate in relation to Commonwealth standards.

93. One criticism which is often put forward is the inability of these laws derived from a Western legal system to take account of Aboriginal values. A basic difficulty arises from the fact that, under some laws, Aboriginals have to prove the religious significance of sites and their importance; partly this is difficult owing to different approaches by different Aboriginal groups to sacred sites and to the fact that knowledge of the sites is restricted to a few gender-specific individuals and partly it conflicts with some Aboriginal values and customs, including the importance given to secrecy.

94. An example which illustrates these difficulties is the Hindmarsh Island case. This case concerned the opposition of a group of Ngarrindjeri women to the construction of a bridge across Hindmarsh Island, on the grounds that sacred sites would be affected. Attempts by the authorities to check the existence of these sacred sites have so far proved ineffective as a result of the shortcomings and loopholes in the laws governing the case, because some of the information held by a restricted number of women is secret and also because the information which is available can only be given to other women,

which would imply that the rapporteur of the commissions of inquiry and the Minister responsible for Aboriginals to whom the report is to be submitted should be women.

95. Judge Elizabeth Evatt, in charge of revising the Aboriginal and Torres Strait Islander Heritage Protection Act, recommended that Aboriginal values and traditions regarding the protection of information should be recognized in the law, so that the notion of secrecy is legally recognized and respected, while allowing for the communication of non-secret information.

96. With regard to criticism of the protective effects of the law, many non-governmental commentators pointed out that, as a result of loopholes and shortcomings in the law, the authorities were able to interfere with the religion of Aboriginals, who were asked to prove the religious significance of a site and its importance and to reveal religious secrets. More protective legislation is required, incorporating Judge Evatt's recommendations, according to non-governmental representatives, in order to prevent any impairment of religion and to ensure that discretionary power in the hands of the authorities, is shared with the Aboriginals.

97. The protection of lands and sacred sites also raises the issue of returning objects of religious significance, including sacred objects, non-sacred but valuable objects, and human remains.

98. In 1990, the ministers of the Commonwealth, States and Territories adopted a policy based on the recognition of Aboriginal cultural property, which gave priority to the return of human remains and cultural property to the Aboriginals. Legislation was passed for that purpose and other acts were to be amended. Some Australian museums have returned collections of sacred objects and valuables, as well as human remains, to their original owners (one example being the return in 1988 by the Victoria Museum and National Museum of Australia of the Murray Black collection of some 1,300 objects), while others have sought to cooperate with Aboriginal communities, particularly by managing collections and cultural presentations so as to ensure that secret/sacred items are handled with respect and sensitivity. Nevertheless, the repatriation of objects held by museums and institutions abroad, especially in Britain, is slow, despite some improvements. For example, national museums in the United Kingdom have claimed that difficulties have arisen due to legislation which prevents the disposal of their collections. In an interview, the Minister for Foreign Affairs recalled that the Australian Government's policy was to seek the repatriation of Aboriginal property.

2. Other areas

99. Despite the official policy of conciliation towards Aboriginals, the latter still appear to occupy a marginal place in economic and social areas, as shown by the frequent occurrences of alcoholism, domestic violence and unemployment in those communities.

100. In the area of employment, there is said to be a reluctance on the part of private employers due to mistrust of Aboriginals, who have to fulfil religious duties, sometimes for long periods of time, for instance on the occasion of a death or of religious ceremonies. According to this view, it

would be difficult to reconcile religious practice and the exercise of uninterrupted professional activity. Clearly there can be clashes between western values and Aboriginal values. In fact, a campaign to inform non-Aboriginal employers would be one way of demonstrating the Aboriginals' wish to work while practising their religion. It is quite possible to reach work agreements allowing special leave arrangements for the Aboriginals. Like other religious communities, the latter also claim recognition of their religious days in the workplace. In public employment, the principle of positive discrimination in favour of Aboriginals has been applied, especially to allow them access to teaching jobs, thus showing that it is not impossible to reconcile employment and Aboriginal religious practices.

101. In the field of education, the authorities' policy is aimed at the full integration, fulfilment and recognition of Aboriginals, partly by facilitating their access to education as students and teachers and partly through school curricula making non-Aboriginals aware of Aboriginal culture and religion. Some Aboriginals have expressed the wish to be more closely consulted in the preparation of school curricula.

102. The authorities' efforts to improve the situation of Aboriginals are therefore genuine, but need strengthening to ensure that economic interests (employment of Aboriginals, economic development projects and sacred sites) are fairly reconciled with those of the Aboriginals and to ensure that expressions of political intolerance (such as the speech by MP Pauline Hanson) are not allowed to affect the fragile, slow process of recognition and assertion of Aboriginals in Australian society.

III. CONCLUSIONS AND RECOMMENDATIONS

103. The Special Rapporteur considered tolerance and non-discrimination based on religion or belief in the Australian legal system and in Australian society. His analysis concerned the situation of religions and belief in general and in particular the Muslim, Jewish, Buddhist and Hindu minorities and the Church of Scientology and The Family; he paid particular attention to the consideration of religious and non-religious matters and relations between religions and society and the State.

104. In the light of his study and the consultations he undertook in the course of his visit, the Special Rapporteur considers that the situation in Australia with regard to tolerance and non-discrimination based on religion is generally very satisfactory. There are a few exceptions to broadly positive conditions which should be mentioned, however, and which should be dealt with and put right.

105. An undeniable factor of religious tolerance in Australia is the country's attachment to democracy, its sound democratic institutions and the Government's multicultural policy fostering a culture of tolerance and aimed at the integration rather than the assimilation of all components of society; to that may be added an approach to secularity which favours not the rejection of religions and new religious movements (or sects), but equality for all under the prevailing law. This democracy, a source of tolerance in general and religious tolerance in particular, is firmly rooted in a culture and tradition of tolerance.

106. Australia therefore provides an original example of integrated multiculturalism and religious tolerance. This multicultural, multiracial and multi-religious edifice, which is in fact recent, is marked by the coexistence of diversity and the management of plurality, while offering the advantage of ensuring respect for the specific character of individual communities and their integration within Australian society.

107. This unfinished experiment undoubtedly constitutes a contribution by Australia to the international community, in terms of a democratic system of society founded on respect for and the viability of diversity, especially religious diversity. It is worth highlighting the role of established, politically driven institutions, which endeavour to respond to the needs of society, including those of its minorities, and provide ways of alleviating all tensions: these are (a) the judicial system, with judges who recognized many of the liberties of citizens even before the law did, in accordance with the common law system, and the High Court, which has interpreted the principle of religious neutrality in a conciliatory and balanced spirit (allowing public subsidies for denominational schools if granted without distinction) and which defines religion in such a way that most of the new religious movements or sects can find their place in it; and (b) national institutions, such as the Human Rights and Equal Opportunity Commission and the Ethnic Affairs Commission.

108. Religious, and in particular Muslim, Jewish, Hindu and Buddhist minorities, generally express satisfaction regarding their situation, which they sometimes go as far as to consider privileged compared with other countries. They are able to flourish as minorities and enjoy the State's political, institutional and financial support, so that insistent claims for greater specificity are able to express themselves quite naturally.

109. Broadly speaking, the situation with regard to tolerance and non-discrimination based on religion or belief seems at first sight to present some paradoxes, although these do not generally give rise to problems.

110. In the first place, as part of its multicultural policy, Australia manages to reconcile cultural, ethnic and religious diversity and the maintenance or even the development of community specificity, including religious specificity, with the integration without assimilation of these minorities in society, or civitas, in the broad sense of the term. Countries with minorities which have difficulty reconciling their specific interests and the general interest of the State could find inspiration in the Australian experiment, bearing in mind the different circumstances which apply.

111. This harmonization of specific interests and the general interest and especially the non-interference between citizenship and minority identities, is therefore remarkable and worthy of interest.

112. Whereas most non-Christian minorities are noteworthy for their religiosity, expressed in terms of religious practice, religious education and their religious claims, especially for recognition of religious days, the predominantly Christian Australian population, whose history and traditions reflect Christian leanings, engages in little religious practice and is

tending increasingly to lose its belief altogether. In fact, religion is not an essential factor for the majority of the Australian population, which is a product of modern secularism.

113. There is nevertheless a great degree of religious tolerance, linked to a tradition of tolerance, or even indifference on the part of Australians in general towards religion. This predominantly indifferent attitude towards religion coexists alongside the development of minorities and many religious movements, which are said to cost the public finances dearly (through tax relief, public subsidies, etc.).

114. There are some exceptions, however, to a generally positive situation, which should be taken into consideration and remedied; these exceptions concern minorities and especially Aboriginals.

115. With regard to minorities, obstacles to the construction of places of worship or religious training centres for Muslim, Hindu and Buddhist minorities have at times been observed; this is mostly due to opposition by one sector of the population founded on ignorance, which encourages manifestations of racism. For instance, in the case of Muslims, the Gulf war led to incidents involving Muslim women wearing the headscarf (see para. 44) and more generally to the expression of opinions where Islam was associated with Saddam Hussein and terrorism with Arabs and Muslims. Such bouts of racism can affect a whole community, in that particular case, Asian and Muslim. There have also been outbreaks of anti-Semitism, in the form of acts of vandalism against synagogues and Jewish cemeteries, and verbal attacks.

116. The intolerance which is manifested is not religious, however, but racial, founded on ignorance and encouraged by extremist political speeches, such as those of MP Pauline Hanson. Such manifestations of racism towards minorities, as well as Aboriginals, are nevertheless a minor phenomenon, which is rejected by a majority of the population (in a survey, 70 per cent of respondents recognized the benefits of the multicultural policy). They are to some extent neutralized through inter-faith dialogue and cleverly combated by the authorities on the whole through institutions applying a clear policy of multiculturalism and through the launch of an educational campaign to combat racism.

117. In this respect, the Special Rapporteur would like to recall that education can play a prime role in preventing intolerance, including racial and religious intolerance, by disseminating a culture of tolerance among the masses. It can contribute decisively to the internalization of values based on human rights. The State is therefore encouraged to develop a national education policy, coordinated at the Federal, State and Territory levels. This policy should of course be directed at schools, teachers and students alike. In this connection, the Special Rapporteur welcomes the educational activities of the National Children's and Youth Law Centre and especially their excellent brochure entitled "Know your rights at school", which includes instructive cards on a number of basic topics, including discrimination and religion at school. Such experiments should be given careful consideration by the States in their education policies in order to promote a real culture of tolerance.

118. The Special Rapporteur further recommends that an educational campaign be conducted for the benefit of the media, which all too often carry caricatural or even totally biased images, which are harmful to minorities and to religion. A sad example of this is the media coverage that was given to the Gulf war. It would be extremely useful to implement the Special Rapporteur's recommendations in the area of advisory services (E/CN.4/1995/91), such as the organization of workshops for media representatives to acquaint them with the importance of disseminating information in conformity with the principles of tolerance and non-discrimination in general and with regard to religion and belief in particular. This would be a way of informing the media and through them of educating society and forming public opinion in accordance with the above-mentioned principles.

119. Similarly, as explained in the National Children's and Youth Law Centre, encouragement should be given to the offer of prizes for journalists who have written articles on minorities in line with the principles of tolerance and non-discrimination. A further positive impact on the public could be achieved by introducing characters representing different beliefs as part of a message of tolerance, respect and mutual enrichment in television programmes, and especially in the screenplays of popular television series.

120. With regard to Aboriginals, the official policy of reconciliation should be pursued and further strengthened in the area of religion. It would be useful to reaffirm recognition of Aboriginal beliefs as religious beliefs and to reflect that recognition in particular in surveys of religious membership in the country.

121. With regard to native titles, the Special Rapporteur wishes to reiterate the concern of the Aboriginal and Torres Strait Islander Social Justice Commissioner with regard to the Federal Government's proposed amendments and respect for the High Court's "Wik Decision". Native titles are in fact fundamental and legislative and jurisprudential advances in this respect must not be called into question.

122. With regard to legislation, while noting with satisfaction the legal and legislative arrangements developed and implemented for the protection of land and sacred sites, including religious objects, and for the return of the religious and cultural heritage, the Special Rapporteur recommends ensuring uniformity of such legislation at the Federal and State levels, as well as its effectiveness in relation to its assigned objective, particularly by identifying and remedying shortcomings and loopholes. The recommendations of Judge E. Evatt should be heeded, to ensure that Aboriginal values are fully taken into account in legislation, particularly the notion of the secrecy of certain types of information and their circulation and publication, according to the gender and function of a limited group of persons. It is further recommended that current legislation should fully guarantee that Aboriginals participate and share in decision-making on an equal footing with the authorities concerned.

123. With regard to the return of objects belonging to the Aboriginals' cultural and religious heritage which are located abroad, especially in

museums, the States concerned should be encouraged to cooperate by removing any political, legislative or other obstacle to the return of the objects as quickly as possible.

124. With regard to conflicts of economic, political and religious interests, the Special Rapporteur would like to recall that freedom of belief, in the present case, that of the Aboriginals, constitutes a basic issue and deserves even stronger protection. The freedom to manifest belief is also recognized, but may be subject to limitations insofar as these are strictly necessary, as stipulated in article 1, paragraph 3, of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and article 18 of the International Covenant on Civil and Political Rights.

125. The manifestation of belief therefore needs to be reconciled with political, economic and other rights and concerns, which are just as legitimate, through dialogue and respect for all parties, including Aboriginals. With regard to the Hindmarsh Island case, the Special Rapporteur calls for a serene approach to the matter and a conciliatory settlement between the parties.

126. Lastly, the Special Rapporteur welcomes the authorities' efforts to ensure that Aboriginals cease to be an excluded community and enjoy all their rights, especially economic, social and cultural rights, by applying the principle of positive discrimination. The private sector, especially employers, should echo this policy and be aware of the importance of Aboriginal beliefs. Considering that Aboriginals are in general economically marginalized and affected by unemployment, sometimes as a result of their religious constraints, special protection should be given to that community, especially by encouraging a change in attitudes in order to arrive at a compromise between economic considerations and religious practice.

127. Generally speaking, the Aboriginal question should be considered with more understanding in Australian society, with a view to eliminating any surviving forms of racism related to historic, social and economic factors which also affect religion.